

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JENNIFER QUERIN-RORIE,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Respondent.

Case No. DISM-01-0036

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, RENÉ EWING, Member. The hearing was held on April 3 and 4, 2002, in the Personnel Appeals Board hearing room in Olympia, Washington. GERALD L. MORGEN, Vice Chair, reviewed the record and participated in the decision in this matter. WALTER T. HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Jennifer Querin-Rorie was present and represented herself *pro se*. Laura L. Wulf, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from the disciplinary sanction of dismissal for neglect of duty, malfeasance, gross misconduct and willful violation of published employing agency rules or policies. Respondent alleged that Appellant visited a client's home and took the client's prescription drugs without permission and that Appellant took prescription drugs from co-workers without permission.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Parramore v. Dep't of Social & Health Services, PAB No. D94-135 (1995), aff'd, Thurston Co. Super. Ct. No. 95-2-03516-4; Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

II. PRELIMINARY MATTER

2.1 On March 29, 2002, Respondent filed a Motion to Continue or in Alternative to Accept Witnesses Statement in Lieu of Testimony and Affidavit. Respondent argued that one of its main witnesses, client Lori H., was unable to attend the hearing and requested that the Board accept Ms. H.'s statement to the Aberdeen Police Department in lieu of her testimony. Respondent argues that Appellant signed a "Statement of Defendant on Submittal or Stipulation to Facts, Jury Trial Waiver, and Speedy Trial Waiver" on August 21, 2001. In the statement, Appellant said, "I wish to stipulate to the police reports and other materials as sufficient to convict me." Respondent argued that since Appellant had already stipulated to the police report, which included Ms. H.'s statement, Ms. H.'s statement should be accepted by the Board in lieu of her testimony.

2.2 On April 1, 2002, the Board considered Respondent's motion. The Board denied the continuance and accepted Lori H.'s statement in lieu of her testimony.

2.3 At the outset of hearing on the appeal, Appellant asked the Board to reconsider its order on Respondent's motion arguing that she needed an opportunity to cross-examine Lori H. and asserting that her stipulation to the police report did not constitute an admission of guilt or an agreement that the report contained the truth.

2.4 Respondent argued that the document speaks for itself, and that Appellant stipulated to the facts contained in the police report, including Lori H.'s statement, as sufficient to convict her.

2.5 The Board considered the arguments of the parties, including a clarification of the issue provided by David Hatch, Attorney at Law, on behalf of Appellant. The Board confirmed its earlier ruling and accepted Lori H.'s statement in lieu of her testimony.

III. FINDINGS OF FACT

2.1 Appellant Jennifer Querin-Rorie was a Financial Services Specialist (FSS) 3 and permanent employee of Respondent Department of Social and Health Services (DSHS) in the Aberdeen Community Services Office (CSO). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal on April 27, 2001.

2.2 By letter dated April 13, 2001, Billie Hartline, Regional Administrator for the Community Services Division, notified Appellant of her dismissal for neglect of duty, malfeasance, gross misconduct and willful violation of the published employing agency or department of personnel rules or regulations. Mr. Hartline alleged that Appellant:

1. Told client Lori H., that she needed to go to Ms. H.'s home to see the prescription drugs she was taking; proceeded to search Ms. H.'s home for the drugs; took a bottle of prescription pain medication; threatened Ms. H.'s children and accused them of stealing the drugs; told Ms. H. to refill her prescription; and on a subsequent date, again went to Ms. H.'s home.
2. In June 2000, went to co-worker Shannon Bennett's home, inquired about the prescription drugs she was taking, and took some of the drugs.
3. On May 31, 2000, while at work, took a bottle of prescription drugs from a co-worker's purse.
4. Took prescription pain medications from two co-workers in 1996 or 1997.

1 2.3 Appellant had been an FSS since July 1, 1994. Appellant received a reduction in salary in
2 1994 for failing to follow her supervisor's directive. In 1999, Appellant's supervisor directed her to
3 never, for any reason, go to a client's home or outside the office to conduct office business. In
4 addition, Appellant's supervisor counseled Appellant on several occasions concerning her
5 inappropriate interactions with staff and clients.

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7 2.4 Appellant was aware of the agency's mission, policies and procedures. She was aware of
8 her duty and responsibility to comply with the policies and fulfill the mission and goals of the
9 agency.

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11 2.5 The DSHS Economic Services Administration mission states, in part: "[h]elp people in
12 need achieve and maintain their highest level of self-sufficiency by providing economic,
13 employment and training, child support, medical and other work-supporting services."

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15 2.6 DSHS Administrative Policy 6.04 addresses ethical conduct and states, in part:

16 A. The Department of Social and Health Services requires employees to perform
17 duties and responsibilities in a manner that maintains standards of behavior that
18 promote public trust, faith and confidence. Specifically, employees shall:

19 1. Strengthen public confidence in the integrity of state government by
20 demonstrating the highest standards of personal integrity, fairness, honesty, and
21 compliance with laws, rules, regulations, and departmental policies. . . .

22 2. Promote an environment of public trust free from fraud, abuse of authority . .
23 . .

24 B. A DSHS employee, anywhere in the chain of command shall not: . . .

25 3. Create the appearance of using the employee's position for personal gain or
26 advantage. . . ."

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28 2.7 DSHS Personnel Policy 540 addresses employees' relationships with clients. Section V.
29 states, in part:

30 A. A department employee is prohibited from the following:

1 1. Receiving, accepting, taking, seeking, or soliciting, directly or indirectly,
2 anything of economic or personal value as a gift, gratuity, or favor from any
3 person. . . .

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5 3. Engaging in any transaction with a person that may result in a conflict of
6 interest.

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8 5. Using the power and authority of the employee's position in a manner
9 intended to induce or coerce another person to provide the employee or any
10 other person with anything of economic or personal value, directly or
11 indirectly."

12 2.8 Financial Services Specialists provide case management services to clients to assist the
13 client in achieving independence and self-sufficiency. Financial Services Specialists conduct
14 ongoing client assessments; amend client responsibility plans; authorize support services for clients;
15 and determine client eligibility for multiple financial, medical and food stamp programs. Financial
16 Services Specialists are not authorized to conduct home visits unless specific permission is obtained
17 from a supervisor or office administrator.

18 2.9 On September 20, 2000, Appellant's supervisor, Sally Potter, received a telephone call from
19 client Lori H. Ms. H. had undergone surgery and applied for benefits because she was unable to
20 work. Appellant was the FSS assigned to her case. Ms. H said that she had a complaint about
21 Appellant but that she was afraid that Appellant would terminate her benefits if she brought her
22 concerns forward. Ms. H. then told Ms. Potter that Appellant went to her house on two occasions
23 and searched for prescription pain pills and that on the first occasion, she threatened Ms. H.'s
24 children and accused them of taking the pills. After Appellant searched her house, Ms. H.
25 discovered that a bottle of prescription pain pills was missing.

26 2.10 We find Ms. H.'s complaint credible. Ms. H. was consistent in reporting the incidents and in
 retelling the story to the investigators. Furthermore, Ms. H. had no motive to be untruthful.

1 2.11 Ms. Potter reported Ms. H.'s complaint to Liz Dalton, the CSO Administrator. Ms. Dalton
2 called Billie Hartline. As a result, Appellant was placed on home assignment. On September 26,
3 2000, Mr. Hartline forwarded a written report of the allegations to Robert Conner, Employee
4 Services Director. The matter was referred to the Washington State Patrol for investigation.

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6 2.12 Because the alleged offense occurred in Aberdeen, the Aberdeen Police Department initiated
7 an investigation on September 28, 2000.

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9 2.13 During the course of the investigation, Shannon Bennett, one of Appellant's co-workers,
10 reported that between June 3 and 12, 2000, Appellant made an unannounced visit to her home. Ms.
11 Bennett was home for medical reasons. Appellant asked Ms. Bennett what drugs she was taking for
12 pain. Ms. Bennett showed Appellant a bottle of prescription drugs. After Appellant left, Ms.
13 Bennett discovered that Appellant had taken all but three of the pills.

14
15 2.14 Also during the course of the investigation, Myrna Rightmire, another one of Appellant's co-
16 workers, reported that before noon on May 31, 2000, Appellant stopped by her desk at work and
17 asked her if she had any pain medication. Due to her recovery from an accident, Ms. Rightmire had
18 a prescription for a painkiller. She removed the bottle with the prescription drugs from her purse
19 along with a container of an over-the-counter pain medication. She gave Appellant some of the
20 over-the-counter pain medication and put both medications back in her purse. During the lunch
21 hour, another co-worker observed Appellant at Ms. Rightmire's desk when Ms. Rightmire was not
22 present. About 3 p.m., Ms. Rightmire discovered that her prescribed pain medication was missing.
23 Although other staff had access to Ms. Rightmire's desk, Appellant was the only staff person who
24 knew Ms. Rightmire's drugs were in her purse.

1 2.15 Appellant denied taking drugs from her co-workers, however, we find the testimony and
2 statements of Ms. Bennett and Ms. Rightmire credible. They have been consistent in their
3 statements and testimony and they have no motive to fabricate Appellant's involvement in these
4 events.

5
6 2.16 On November 7, 2000, Appellant gave a statement to the Aberdeen Police Department. In
7 her statement, Appellant admitted that she was a drug addict and that she was in recovery.
8 Appellant also admitted that in 1996 or 1997, she stole prescription drugs from the home of Liz
9 Lail, a co-worker, and from the work desk of Stephanie Hill, another co-worker. Appellant denies
10 telling the Aberdeen Police Detective that she took drugs from Ms. Hill's desk. However, Appellant
11 signed the November 7, 2000, statement she gave to the police and by her signature, she confirmed
12 that the facts contained in the statement were true.

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14 2.17 On December 20, 2000, the Aberdeen Police Department forwarded the case to the Grays
15 Harbor County Prosecutor's Office. On February 16, 2001, the Grays Harbor County Prosecutor's
16 Office charged Appellant with three counts of Possession of a Legend Drug and three counts of
17 Theft in the Third Degree.

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19 2.18 On February 22, 2001, the Washington State Patrol forwarded the completed investigation
20 to DSHS.

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22 2.19 After receiving the completed investigation, Mr. Hartline determined that misconduct had
23 occurred. Before determining the level of discipline, Mr. Hartline provided Appellant with a pre-
24 disciplinary letter, met with her and considered her written response to the charges. Mr. Hartline
25 also considered Appellant's personnel history. Mr. Hartline concluded that Appellant neglected her
26 duty and abused her authority when she went to Ms. H.'s home, threatened her children and took her

1 medication. Mr. Hartline concluded that Appellant also neglected her duty when she took drugs
2 from her co-workers. Mr. Hartline determined that Appellant took the medications unlawfully
3 which constituted malfeasance and interfered the performance of her duties. Mr. Hartline found
4 that Appellant's actions were contrary to the agency's mission, policies and procedures and that her
5 behavior rose to the level of gross misconduct. Mr. Hartline felt that Appellant's behavior was
6 egregious and showed that she was untrustworthy and dishonest. Mr. Hartline determined that
7 Appellant's immediate suspension followed by dismissal was warranted.

8 9 **III. ARGUMENTS OF THE PARTIES**

10 3.1 Respondent argues that the facts in the police report are true and accurate and that the
11 charges in the disciplinary letter are substantiated. Respondent asserts that Appellant misused her
12 authority as a caseworker, neglected her duty, violated agency policies, and committed theft and
13 unlawful possession of prescription drugs. Respondent contends that Appellant's actions adversely
14 affected her ability to do her job and that her misbehavior was flagrant and contrary to the agency's
15 mission. Respondent asserts that flagrant misbehavior and unlawful conduct cannot be tolerated
16 and that dismissal was warranted.

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18 3.2 Appellant argues that the allegations arose from a series of coincidental incidents.
19 Appellant admits that she went to Lori H.'s home but asserts that she did not take drugs and did not
20 threaten Ms. H.'s children. Appellant argues that Lori H is not credible. Appellant further argues
21 that she was out of town during the time period Ms. H. alleges the drugs were taken. Appellant
22 contends that she never went to a client's home during work hours. Appellant denies taking drugs
23 from Shannon Bennett's home, however, she admits visiting her home. Appellant admits taking
24 over-the-counter painkillers from Myrna Rightmire and going to her office area when Ms.
25 Rightmire was away from the area, however, Appellant denies taking Ms. Rightmire's prescribed
26 painkillers. Appellant contends that all of the staff in the office and the clients had access to Ms.

1 Rightmire's work area and could have taken the drugs. Appellant further contends that no one saw
2 her take Ms. Rightmire's medication. Appellant admits that she took prescription medication from
3 Liz Lail, but denies that she took medication from Stephanie Hill. Appellant contends that the
4 department knows she is a drug addict and that she is in recovery. Appellant asserts that she was a
5 good caseworker, she carried a full caseload, processed cases timely and participated in case
6 management meetings in spite of her personal medical problems. Appellant argues that the agency
7 failed to provide her with a performance evaluation and asserts that this situation could have been
8 resolved if the agency had obtained all of the information needed to make an accurate decision.

9 10 **IV. CONCLUSIONS OF LAW**

11 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
12 herein.

13 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
14 the charges upon which the action was initiated by proving by a preponderance of the credible
15 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
16 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
17 Corrections, PAB No. D82-084 (1983).

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19 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
20 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
21 of Social & Health Services, PAB No. D86-119 (1987).

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23 4.4 Malfeasance is the commission of an unlawful act, the act of doing what one ought not to
24 do, or the performance of an action that ought not to be done, that affects, interrupts or interferes
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1 with the performance of an official duty. Parramore v. Dep't of Social & Health Services, PAB No.
2 94-135 (1995), aff'd, Thurston Co. Super. Ct. No. 95-2-03516-4.

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4 4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
5 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

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7 4.6 Willful violation of published employing agency or institution or Personnel Resources
8 Board rules or regulations is established by facts showing the existence and publication of the rules
9 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
10 rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social &
11 Health Services, PAB No. D93-053 (1994).

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13 4.7 Respondent met its burden of proof that Appellant neglected her duty, violated agency
14 policies, committed malfeasance and that her actions rose to the level of gross misconduct.
15 Appellant abused her authority as an FSS when she visited a client's home, contrary to the directive
16 of her supervisor, threatened the client's children and took the client's prescription drugs.
17 Furthermore, Appellant took prescription drugs from co-workers without permission. Appellant's
18 actions were egregious, contrary to the expectation that state employees represent the state of
19 Washington in a professional, honest and lawful manner.

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21 4.8 Under the totality of the proven facts and circumstances, and given the serious nature of
22 Appellant's flagrant misconduct, immediate suspension followed by dismissal is appropriate and the
23 appeal should be denied.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Jennifer Querin-Rorie is denied.

DATED this _____ day of _____, 2002.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Gerald L. Morgen, Vice Chair

René Ewing, Member